IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 19 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHIBEN CHHAGANBHAI VALAND - Appellant(s)
Versus
KARSHANBHAI AMBALAL PATEL - Defendant(s)

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Appearance :
MR BG PATEL under the authority of MR JITENDRA M PATEL for Appellant
MR SHIVANG SHUKLA under the authority of MR DC DAVE for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/11/2006

ORAL JUDGMENT

1. The short facts leading to the present appeal are that the plaintiff had executed a sale deed

in favour of the present respondent-defendant. In the sale deed the description of the property was detailed in measurement and also by the boundary marks. The measurements were 75 feet X 16 feet, but the boundary descriptions were little more. After execution of the sale deed, the plaintiff found that taking undue advantage of the recitals in the sale deed the defendant was trying to grab her property, she filed the suit for injunction submitting inter-alia that the property which includes a latrine and some open area was not sold by her to the defendant and as the defendant has no right over the property, the defendant be restrained from interfering with plaintiff's possession.

2. The defendant appeared in the Court and pleaded inter-alia that the sale deed conveyed the property in dispute in his favour. It was also submitted that in case of the dispute between the measurement and the boundary marks, the Court should always be governed by the boundary marks because the parties may not know the exact measurement of the property proposed to be sold,

but would always know the boundary marks.

3. The learned trial Court held that the property in dispute was not sold by the plaintiff to the defendant and as such defendant would not have any right,title or interest in the property. It accordingly restrained the defendant from interfering with the property. The appellate Court reversed the said findings observing that in a case of dispute between the measurement and the boundary marks, the Court should ordinarily be governed by the boundary marks. It allowed the appeal and dismissed the suit.

4. Being aggrieved by the said judgment and decree, the plaintiff-appellant is before this Court. The appeal has been admitted for hearing the parties on the following substantial question of law.

   “Whether on the facts and in the circumstances of the case, the manner and method adopted by the learned District Judge in interpreting the sale document Exh.52 is correct ?”

5. Shri Shukla, learned counsel for the respondent-defendant submits that interpretation of the

document would always be within the domain of the lower Courts and if the first appellate Court interprets the document in a particular manner and such interpretation does not appear to be illegal, then such interpretation would be a finding and that cannot be disturbed by the second appellate Court unless the approach of the first appellate Court appears to be perverse.

6. Undisputedly the plaintiff had executed the sale deed Exh.52 in favour of the defendant. The docment described the property by measurement so also by the boundary marks. It is trite law that in case of a dispute between the measurement and the boundary marks ordinarily the boundary marks shall prevail. In the present case, the principal would apply with additional force in absence of any reservation in favour of the plaintiff in said Exh.52 that portion of 16 feet X 5 feet which includes a latrine was not sold or any property included between the boundary marks was not sold.

7. In the opinion of this Court, the learned first

appellate Court was not unjustified in interpreting the document. The question cannot be answered in favour of the appellant-plaintiff because in the opinion of this Court, the appellate Court was justified in interpreting the document in the manner as it did. The appeal deserves to and is accordingly dismissed. No costs. Let a decree be framed accordingly.

(R.S.GARG, J.)

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